



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0266; FRL-9975-79-Region 1]

Air Plan Approval; New Hampshire; Approval of Recordkeeping and Reporting Requirements and Single Source Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. The revisions establish recordkeeping and reporting obligations for sources of air pollution. Additionally, we are approving an order limiting emissions of volatile organic compounds from a facility in the State. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2017-0266. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at www.regulations.gov or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office

Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1046; mcconnell.robert@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On November 14, 2017 (82 FR 52683), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Hampshire. The NPRM proposed approval of a revised single source order limiting emissions of volatile organic compounds (VOCs) from Sturm Ruger & Company, and a revised state regulation identified as Env-A 900, Owner or Operator Recordkeeping and Reporting Obligations. During the public comment period we received four comment letters. Two of the comment letters did not contain information that was specific or

germane to our proposed actions for New Hampshire. One comment letter noted that approving New Hampshire's SIP revisions was "a bad idea," but did not explain why or how New Hampshire's SIP revisions should be changed. One letter did contain relevant adverse comments and those comments are responded to below. In light of these relevant adverse comments, on January 11, 2018 (83 FR 1302) we published a withdrawal of the direct final rule we published in conjunction with our November 14, 2017 NPRM (82 FR 52664).

II. Response to Comments

Comment

A comment was received indicating that EPA should not approve the "reasonably available control technology" (RACT) order for Sturm Ruger & Company for the following reasons. First, the commenter notes that Table 1 of the order illustrates that the company is able to meet a more stringent emission limit for topcoats than the order requires, and therefore the order should not be approved because this emission limit does not represent the lowest emission limit the source can meet for that coating. Additionally, the commenter notes that EPA should not approve sections of the order that involve SIP-approved rules because doing so is redundant, and may create conflicting requirements if the state changes the SIP-approved rule at some point in the future.

Response

With regard to the commenter's first point, we note that the RACT order that we are approving into the New Hampshire SIP, Order ARD-03-001 issued to Sturm Ruger & Company, is divided into four parts as follows: Section A, Introduction; Section B, Parties; Section C, Statement of Fact and Law; and Section D, Order. Section D, Order, contains the RACT requirements New Hampshire has tailored to the facility. Table 1, which the commenter alludes to as being indicative that the order contains insufficient requirements for RACT because the

emission limit contained within it does not represent the lowest emission limit the source can meet for that coating, is found within Section C, Statement of Fact and Law, and the volatile organic compound (VOC) limits cited within it are from a state regulation previously approved into the New Hampshire State Implementation Plan (SIP).¹ Section C is provided as informative background as to what air pollution control regulations the source is subject to. Table 1 of Section C indicates that the source at issue in this SIP action uses coatings with VOC contents that are lower than allowed by the State's regulation, which illustrates that the source is in compliance with those existing state requirements. New Hampshire adopted the regulation in question, Env-A 1213, Wood Furniture, Burial Caskets, and Gunstock Coatings, to meet, in part, its obligation to ensure that RACT is required at major, and some non-major, sources of VOC emissions. EPA approved the State's regulation as meeting RACT on March 10, 1998 (63 FR 11600). EPA is not taking any action on those previously-approved SIP provisions in this action. The fact that the source has found coatings with VOC content limits that are lower than required by the State's regulation does not dictate that New Hampshire revise its regulation to make it more stringent; rather, as noted previously, it indicates that the source is in compliance with the State's RACT requirements for such facilities. The commenter's assertion that the levels shown in Table 1 can't be RACT because it is not the lowest emission limit the source can meet appear to confuse RACT, which requires "reasonably available control technology," with the requirements of a more rigorous regulatory tool of "lowest achievable emission rate" (LAER). LAER, as defined at 40 CFR 51.165(a)(1)(xiii), could in some instances require a more stringent level of control than RACT.

¹ Table 1 of the order contains an outdated citation; it cites "Env-A-1204.27 and 1204.28(a)(3), which are currently part of the "definitions" section of New Hampshire's VOC regulations. The current citations are as follows: For topcoats, Env-A 1213.03(a); for sealers, Env-A 1213.03(b); for strippable booth coatings, Env-A 1213.04(a)(3).

In response to the commenter's second point regarding the Sturm Ruger & Company order, we do agree that some portions of Section D of the order are currently part of the New Hampshire SIP, and are therefore duplicative and not needed within the order. We have included in the Docket for this action a version of the State's order that excludes the portions of Section D of the order that are duplicative of existing, SIP-approved requirements, and are incorporating that version into the NH SIP. A copy of the version of RACT Order ARD-03-001, as amended February 2, 2017, that we are approving into the New Hampshire SIP has been placed into the Docket for this rulemaking.

Comment

A comment was received requesting that EPA not approve New Hampshire's recordkeeping and reporting rule, Env-A 900, until the state clarifies the applicability section of the rule. The commenter asserted that, as currently structured, the rule would apply to many small sources, including individual users of consumer products, and is therefore far too burdensome. The commenter cites Env-A 902.01 and 903.01 as examples of the asserted broad reach of the rule's authority.

Response

The applicability criteria of New Hampshire's Env-A 900 differ by section of the regulation, and are structured such that they would not apply to the small entities noted by the commenter. The provisions at Env-A 902.01 are not applicability provisions; rather, they provide the record retention and record availability requirements for sources that are subject to the rule. Env-A 903.01 does contain applicability criteria. For example, Env-A 903.01(a) provides applicability criteria as follows: "Except as provided in (b)², below, this part shall apply to any stationary source, area source, or device that is subject to Env-A 600" (underlined emphasis added). Env-A

² Paragraph (b) of Env-A 903.01 lists several specific source types that are exempt from the section's requirements.

600 is applicable to sources required to obtain a permit from the New Hampshire Department of Environmental Services (NH DES), and there are various, specific applicability criteria within that regulation identifying who needs to do so. For example, Env-A 607, Temporary Permits, applies to the sources identified within Env-A 607.01, including those noted in paragraph (a) of that section: external combustion devices with a heat input of greater than or equal to 10 million British Thermal Units (BTUs) per hour burning gas, liquid propane, distillate fuel, or any combination of these fuels. Env-A 607.01 continues with specific applicability criteria for other types of equipment, and in no case would apply to the small entities noted by the commenter. In addition, Env-A 900, section 904.01 provides applicability criteria for equipment that has "... actual VOC emissions greater than or equal to 10 tons in any calendar year or that is subject to Env-A 1200 'VOC RACT'" Here, as within Env-A 600, the specific applicability criteria of New Hampshire's regulations preclude their application to the small entities contemplated by the commenter, and no part of the regulation we are approving, Env-A 900, provides the state with such authority.

III. Final Action

EPA is approving portions of New Hampshire's revised regulation Env-A 900, Owner or Operator Recordkeeping and Reporting Obligations, and certain parts of the RACT Order ARD-03-001 issued to Sturm Ruger & Company, as revisions to the New Hampshire SIP. This rule, which responds to the adverse comments received, finalizes our proposed approval of these SIP revisions.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by

reference of portions of Env-A 900, Owner or Operator Recordkeeping and Reporting Obligations, and portions of Order ARD-03-001, as amended February 2, 2017, as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 1 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **Insert date 60 days after date of publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 20, 2018.

Alexandra Dapolito Dunn,
Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart EE—New Hampshire

2. Amend § 52.1520 by:

a. In paragraph (c), amend the table by revising the entry “Env-A 900”; and

b. In paragraph (d), amend the table by:

i. Removing the two entries entitled “Sturm, Ruger & Company”; and

ii. Adding a new entry entitled “Sturm Ruger & Company” at the end of the table.

The revisions and additions read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
**	*	*	*	**

Env-A 900	Owner or Operator Obligations	7/18/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Approved sections Env-A 901 through 911, except for the following sections withdrawn by the State and which are not part of the approved SIP: Env-A 907.01(d) and (e); 907.02(a)(1), (d)(1) a. and c., (d)(2), and (e); 907.03; 911.04(b) and (c); 911.05.
**	*	*	*	**

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(d) * * *

EPA-APPROVED NEW HAMPSHIRE SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date ²	Additional explanations/§52.1535 citation
**	*	*	*	**
Sturm Ruger & Company	ARD-03-001	2/2/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	VOC RACT Order, as amended February 2, 2017, except sections D.1, and introductory clauses to sections D.2, D.3.b, D.5.a.i and b.i.

² In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

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[FR Doc. 2018-06381 Filed: 3/29/2018 8:45 am; Publication Date: 3/30/2018]